IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 39 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARBHAI KHODABHAI RABARI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR JM PANCHAL for Applicant(s) : 1,
Mr SS Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 08/02/2007

ORAL JUDGMENT

1. After the original complainant and victim of the offence being joined as party respondent no.2, he has appeared in person along with his learned counsel, Mr

Kanaiyalal Prajapati. The parties have submitted a joint compromise note in the following terms, to which learned APP expressed no objection:

> "It is humbly submitted jointly that the complainant and the accused, because of the intervention of caste leaders, elderly persons and well wishers, have come to terms and they have amicably settled the dispute outside the court. It is humbly submitted that as condition/part of the compromise the accused-petitioner herein will pay an amount of Rs.40,000/- as compensation to the complainant-respondent no.2 has agreed and showed his willingness to accept the amount from the accused. The complainant had remained present before the Hon'ble Court on 7.2.2007. It is also submitted that this amount or the amount which is deemed fit by the Hon'ble Court of compensation would be irrespective of, in addition to and without prejudice to the rights and the interests of the complainant-respondent no.2 in the MACP case. And the complainant does not want to pursue the matter any further if the amount of compensation which would be ultimately decided by the Hon'ble Court is given to him and he is not interested in sending the accused in jail.

It is humbly brought to the notice of the Hon'ble Court that the complainant-respondent has advanced the claim of Rs.1,75,000/- in MACP case, and out of it Rs. 25,000/- is already paid to the complainant-respondent no.2. It is also submitted that the accused has no previous conviction except the present one; that the present incident is approximately 10 years back; that there exists good terms between the parties; that there is no likelihood of the petitioner repeating the offence; that the petitioner has liability to maintain his family consisting of a wife and an unmarried daughter; that the accused hails from the lower strata and downtrodden class of the society having no sufficient means to settle in life; that the petitioner-accused has continued in service and there is no incident reported of similar nature against him nor it could be pointed out to suggest that the petitioner-accused has tendency to repeat the offence of similar type; that looking to the facts of the case, it appears that the accused was not so grossly negligent; that if the conviction is maintained then the possibility of facing departmental action is also not safely excluded; that fortunately the offence has not escalated to higher counts i.e. under

section 304-A.

In above view of the matter it is most respectfully and humbly prayed that :

(a) The Hon'ble Court may kindly permit the compounding of offences qua sections 337 and 338, under section 320 of the Cr.P.Code, since dispute is settled and as far as sec.279 is concerned the conviction and sentence may kindly be modified/altered by granting probation to the accused.

(b) While granting benefit of probation the Hon'ble Court may kindly admonish and grant compensation under section 3 and 5 of the Probation of Offenders Act, and kindly direct such amount which this Hon'ble Court may deem fit to be paid to the original complainant as compensation without prejudice to the rights and interests in MACP case.

2. In view of the above understanding and prayer jointly made by the learned counsel, without entering into merits, it is directed that the offences punishable under sections 337 and 338 of Indian Penal Code, 1860 shall stand compounded under the provisions of section 320 of the Criminal Procedure

Code, 1973 and the petitioner shall stand acquitted of the offence. He does not claim refund of the fine paid already. As for the conviction for the offence punishable under section 279 of Indian Penal Code and sections 177 and 184 of the Motor Vehicles Act, the petitioner is released after due admonition and with the direction that, he shall pay to respondent no.2 the sum of Rs.40,000/- as agreed, by way of compensation under the provisions of section 5 of the Probation of Offenders Act, 1958.

Rules is made absolute accordingly with no order as to costs. Bail bond furnished by the petitioner shall stand cancelled.

sd/-
[D. H. Waghela, J.]

msp